

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	Case No. 1:19-cv-5253
	:	
CASTLE AIR CONDITIONING CORP.,	:	
	:	
<i>Defendant.</i>	:	

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**COMPLAINT**

The United States of America, at the direction of a delegate of the Attorney General and with the authorization of a delegate of the Secretary of the Treasury, pursuant to 26 U.S.C. § 7401, brings this civil action to reduce to judgment unpaid federal tax liabilities owed by Castle Air Conditioning, Corp. For its complaint, the United States alleges as follows:

1. The district court has jurisdiction pursuant to 26 U.S.C. §§ 7402(a) and 28 U.S.C. §§ 1331, 1340, and 1345.
2. The defendant Castle Air Conditioning Corp. is located in Queens County, New York, within the jurisdiction of this Court.
3. A delegate of the Secretary of the Treasury made assessments against Castle Air Conditioning, Corp., for employment taxes (Form 941) for the periods, on the dates, and in the amounts described below. These liabilities have balances due as of September 2, 2019, including assessed and accrued late-filing and late-payment penalties under 26 U.S.C. § 6651 or penalties for failure to make estimate tax payments under 26 U.S.C. § 6654, costs, and statutory interest, and after applying any abatements, payments, and credits, as follows:

<b>Tax Period Ending</b>	<b>Assessment Date</b>	<b>Amount Assessed</b>	<b>Balance Due 09/02/2019</b>
12/31/2006	11/19/2007	\$28,101.98	\$31,023.63
09/30/2007	12/24/2007	\$21,583.96	\$18,447.83
12/31/2007	05/19/2008	\$28,121.63	\$64,861.57
03/31/2008	06/30/2008	\$22,680.30	\$20,172.81
06/30/2008	09/29/2008	\$21,032.61	\$24,188.46
09/30/2008	03/02/2009	\$21,576.07	\$23,877.90
12/31/2008	04/06/2009	\$24,132.40	\$27,716.40
03/31/2009	06/29/2009	\$19,096.70	\$38,964.15
06/30/2009	09/07/2009	\$20,849.18	\$41,977.87
09/30/2009	01/04/2010	\$24,695.72	\$48,990.00
12/31/2009	04/05/2010	\$25,566.23	\$50,187.79
03/31/2010	06/14/2010	\$19,906.93	\$38,700.43
06/30/2010	09/20/2010	\$18,910.53	\$36,339.39
09/30/2010	02/14/2011	\$38,719.22	\$74,470.86
12/31/2010	04/04/2011	\$35,907.55	\$78,042.69
03/31/2011	07/04/2011	\$17,793.18	\$34,003.83
06/30/2011	09/19/2011	\$14,764.81	\$1,674.63
03/31/2012	07/02/2012	\$11,058.83	\$627.71

06/30/2012	10/01/2012	\$18,612.95	\$22,561.74
09/30/2012	01/07/2013	\$20,369.05	\$35,051.96
12/31/2012	03/25/2013	\$21,951.33	\$33,864.72
03/31/2013	06/24/2013	\$20,862.39	\$22,911.84
06/30/2013	09/30/2013	\$18,211.27	\$27,571.26
09/30/2013	01/06/2014	\$21,787.52	\$31,686.34
12/31/2013	04/07/2014	\$18,342.12	\$25,043.71
03/31/2014	06/30/2014	\$19,451.60	\$32,683.23
09/30/2014	12/22/2014	\$21,527.09	\$23,290.13
12/31/2014	04/06/2015	\$20,420.93	\$23,045.04
03/31/2015	06/29/2015	\$17,370.18	\$1,736.78
06/30/2015	09/28/2015	\$29,453.86	\$18,853.10
09/30/2015	02/08/2016	\$24,055.45	\$18,988.23
12/31/2015	04/04/2016	\$21,439.48	\$29,583.77
03/31/2016	07/04/2016	\$14,365.67	\$17,329.31
06/30/2016	10/03/2016	\$7,962.90	\$595.57
09/30/2016	01/09/2017	\$15,823.01	\$1,538.85
03/31/2017	07/03/2017	\$6,180.33	\$173.46
06/30/2017	10/02/2017	\$11,484.94	\$1,264.09
09/30/2017	02/12/2018	\$11,093.34	\$9,620.88

12/31/2017	03/26/2018	\$19,855.08	\$8,557.76
03/31/2018	07/09/2018	\$16,799.58	\$1,441.67
06/30/2018	12/10/2018	\$14,217.81	\$18,971.55
09/30/2018	12/31/2018	\$16,150.55	\$20,823.00
12/31/2018	04/08/2019	\$20,713.61	\$25,840.56
03/31/2019	06/17/2019	\$17,268.86	\$20,897.59
<b>Total</b>			\$1,105,605.35

4. Notice of the liabilities described in paragraph 3 was given to, and payment demanded from, Castle Air Conditioning Corp.

5. Despite proper notice and demand, Castle Air Conditioning Corp. failed, neglected, or refused to fully pay the liabilities, and after the application of all abatements, payments, and credits, it remains liable to the United States in the amount of \$1,105,605.35, plus statutory additions and interest accruing from and after September 2, 2019.

6. An installment agreement associated was pending for 60 days from February 8, 2008, until April 8, 2008, thereby tolling the statute of limitations under 26 U.S.C § 6331(k)(2) for quarterly tax periods ending December 31, 2006, and September 30, 2009. Further, the installment agreement was terminated on November 24, 2008, which tolled the statute of limitations for an additional 30 days under 26 U.S.C. § 6331(k)(2)(A), (B), for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, and March 31, 2008.

7. A second installment agreement was entered on December 27, 2011, and was terminated on April 11, 2013, which tolled the statute of limitations for an additional 30 days

under 26 U.S.C. § 6331(k)(2)(A), (B), for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

8. A third installment agreement was pending for 226 days from September 23, 2014, until May 7, 2015, thereby tolling the statute of limitations under 26 U.S.C § 6331(k)(2) for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009. Further, the installment agreement was terminated on April 28, 2016, which tolled the statute of limitations for an additional 30 days under 26 U.S.C. § 6331(k)(2)(A), (B) for these quarterly tax periods.

9. On June 12, 2017, Castle Air Conditioning Corp. submitted an offer in compromise pursuant to 26 U.S.C. § 7122. The offer in compromise was rejected on March 28, 2018.

10. Although a proceeding in court must generally be commenced within ten years after the assessment of a tax, this action has been timely commenced under 26 U.S.C. § 6502 because the statute of limitations was tolled pursuant to 26 U.S.C. § 6331(i) and (k) for quarterly tax periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

WHEREFORE, the plaintiff United States of America requests the following relief:

A. Judgment against the defendant Castle Air Conditioning Corp. for unpaid federal employment tax liabilities (Form 941) for the quarterly periods ending December 31, 2006, September 30, 2007, December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008,

December 31, 2008, March 31, 2009, June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30, 2010, September 30, 2010, December 31, 2010, March 31, 2011, June 30, 2011, March 31, 2012, June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013, June 30, 2013, September 30, 2013, December 31, 2013, March 31, 2014, September 30, 2014, December 31, 2014, March 31, 2015, June 30, 2015, September 30, 2015, December 31, 2015, March 31, 2016, June 30, 2016, September 30, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018, June 30, 2018, September 30, 2018, December 31, 2018, and March 31, 2019, in the amount of \$1,105,605.35, plus statutory additions and interest accruing from and after September 2, 2019, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c); and,

B. The United States of America shall recover its costs, and be awarded such other and further relief as the Court determines is just and proper.

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
Tax Division, U.S. Department of Justice

*/s/ Marie E. Wicks*  
\_\_\_\_\_  
MARIE E. WICKS  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 55  
Washington, D.C. 20044  
202-307-0461 (v)  
202-514-5238 (f)  
Marie.E.Wicks@usdoj.gov

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 Marie E. Wicks, Trial Attorney, U.S. Department of Justice, Tax Division  
 P.O. Box 55, Washington, D.C. 20044  
 (202) 307-0461; Marie.E.Wicks@usdoj.gov

**DEFENDANTS**

Castle Air Conditioning Corp.

County of Residence of First Listed Defendant \_\_\_\_\_ **Queens County**  
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |                                                                 |                                                                                              |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i>          |
| <input type="checkbox"/> 2 U.S. Government Defendant            | <input type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i> |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- |                                                           |                                                     |                                                          |                                                   |                                                                              |                                                     |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):  
 26 U.S.C. s. 7401

**VI. CAUSE OF ACTION**

Brief description of cause:  
 Reduce to judgment tax assessments

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.      **DEMAND \$** 1,105,605.35      CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD  
 09/13/2009 /s/ Marie E. Wicks

**FOR OFFICE USE ONLY**

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

## CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Marie E. Wicks, counsel for United States of America, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,  
the complaint seeks injunctive relief,  
the matter is otherwise ineligible for the following reason Tax Matter

## **DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

## **RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

## **NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  Yes  No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County?  Yes  No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  Yes  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: \_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?  Yes  No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

## **BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: /s/ Marie E. Wicks

**UNITED STATES DISTRICT COURT**  
for the  
**Eastern District of New York**

UNITED STATES OF AMERICA )  
\_\_\_\_\_  
Plaintiff(s) )  
v. )  
CASTLE AIR CONDITIONING CORP. )  
\_\_\_\_\_  
Defendant(s) )

Civil Action No. 1:19-cv-5253

**SUMMONS IN A CIVIL ACTION**

To: (Defendant's name and address)

Castle Air Conditioning Corp.  
549 51st Avenue  
Long Island City, NY 11101

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Marie E. Wicks, Trial Attorney  
U.S. Department of Justice, Tax Division  
P.O. Box 55  
Washington, D.C. 20044  
Marie.E.Wicks@usdoj.gov  
(202) 307-0461

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

Civil Action No. 1:19-cv-5253

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

- I personally served the summons on the individual at (*place*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I left the summons at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_,  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_  
on (*date*) \_\_\_\_\_; or
- I returned the summons unexecuted because \_\_\_\_\_; or
- Other (*specify*): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc: